

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:13-CV-315-BO

JOHN LASCHKEWITSCH as
administrator for the Estate of Ben
Laschkewitsch,

Plaintiff,

v.

LINCOLN LIFE AND ANNUITY
DISTRIBUTORS, INC., d/b/a LINCOLN
FINANCIAL GROUP, INC.

Defendant.

ORDER


This cause comes before the Court on plaintiff's *pro se*¹ motion for entry of default judgment [DE 8]. Because default has not been entered in this matter, plaintiff's request for entry of default judgment is premature and is DENIED. Fed. R. Civ. P. 55(a)-(b); *see also New York v. Green*, 420 F.2d 99, 104 (2nd Cir. 2005) (Rule 55 provides a two-step procedure for obtaining default judgment, the first of which is to obtain entry of default).

Even liberally construed as a motion for entry of default, plaintiff's motion is without merit. The Federal Rules of Civil Procedure apply to cases removed from state court, and a defendant who has not answered prior to removal has the longest of three periods, including seven days from the filing of the notice of removal, to answer or otherwise respond. Fed. R. Civ. P. 81(c)(1)-(2). Defendant timely removed this action on April 30, 2013, and filed a motion to extend time to answer or otherwise respond on May 3, 2013. The motion to extend time was

¹Plaintiff's original action was filed by counsel, but after this matter's removal from Cumberland County Superior Court counsel for plaintiff was permitted to withdraw [DE 16].

granted and defendant was permitted through and including June 6, 2013, to answer or otherwise respond to plaintiff's complaint. Fed. R. Civ. P. 6(b). Defendant did in fact file an answer to plaintiff's complaint on June 6, 2013. Accordingly, entry of default against defendant is not appropriate, and, insofar as plaintiff has requested that default be entered, his request is denied.

SO ORDERED, this 6 day of August, 2013.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE